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AFR (65)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. (C) NO. 671 OF 2006

APPELLANT — DIVISIONAL MANAGER, THE ORIENTAL INSURANCE CO. LTD.

Versus

RESPONDENTS — SURESH KUMAR SHIVHARE AND OTHERS.

JUDGMENT

POST ON 24 JULY 2007

Sd/-
Dhirendra Mishra
Judge

(16)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. (C) NO. 671 OF 2006

APPELLANT		DIVISIONAL MANAGER, THE ORIENTAL INSURANCE CO. LTD. RAJPATH ROAD, AMRAVATI (MAHARASHTRA), THROUGH DIVISIONAL MANAGER, THE ORIENTAL INSURANCE CO. LTD. OPPOSITE HIGH COURT BILASPUR (C.G.)
	Versus	
RESPONDENTS	1.	SURESH KUMAR SHIVHARE AGE ABOUT 35 YRS., S/O LATE RAMSEVAK SHIVHARE, RESIDENT OF TAKHATPUR, DISTT.-BILASPUR C.G. (CLAIMANT)
	2.	NANCHU ALIES NANKU AGE ABOUT 22 YRS. S/O SHIVRAM DEWANGAN, RESIDENT OF VILLAGE BAVLI, THANA - PATHRIYA, DISTT.-BILASPUR C.G. (DRIVER)
	3.	SHRI MANOHAR LAL VERMA S/O SHRI KASHIRAM VERMA, RESIDENT OF CHAKARBHATHA BILASPUR, C.G. (OWNER OF SAI BUS NO. - M.H. 27-A-9167)

Present:

Mr. Sudhir Agrawal, Advocate for the appellant/insurer.
Mr. Sameer Singh, Advocate for respondent No.1.
None for respondent No. 2, though served.
Mr. P.K. Tulsiyan, Advocate for respondent No.2.

J U D G M E N T

(Delivered on 24/07/2007)

Dhirendra Mishra, J

The appellant, insurance company, has preferred this appeal against the award dated 15th September 2006 passed in Claim Case No. 20/04 whereby learned Additional Motor Accident Claims Tribunal

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(FTC), Bilaspur has awarded a sum of Rs.1,00,000/- with interest at the rate of 9% per annum from the date of application i.e. 16.3.2004 to the respondent No.1/claimant for the injuries sustained by him in the motor vehicle accident dated 23.6.2003 involving Bus No. M.H. 27-A/9167, owned by respondent No.3, driven by respondent No.2 and insured by the appellant for the relevant period and has held the appellant/insurer also jointly and severally liable for satisfying the impugned award.

2. Grievance of the appellant/insurer is that respondent No. 2 was having driving licence to drive L.M.V. (Light Motor Vehicle) at the time of accident and he was driving passenger bus of H.G.V. (Heavy Goods Vehicle) category, thus the owner deliberately allowed respondent No. 2 who was not having valid and effective driving licence to drive the vehicle at the time of accident and as such, committed a breach of policy condition.

3. Reliance is placed on the judgments in the matters of **Ishwar Chandra & Ors. V. The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2007 S.C. 1445**, and **National Insurance Co. Ltd. Vs. Kusum Rai and others** reported in **2006 ACJ 1336.**

4. On the other hand, learned counsel for respondent No. 3 submitted respondent No.2/driver at the time of accident was holding licence to drive light motor vehicle, he was entitled to drive light motor vehicle having a weight not exceeding 7,500 kg. There is no evidence that the vehicle involved in the accident weighed more than 7,500 kg and since there is no evidence as to weight of the minibus, it cannot be said that there was any breach of conditions of the insurance policy.

5. Reliance is placed on the judgment of Division Bench of the M.P. High Court in the matter of **United India Insurance Co. Ltd. Vs. Radheshyam and others** reported in **2004(4) M.P.H.T.243 (DB).**

6. I have heard learned counsel for the respective parties and perused the material available on record as also the impugned award.

7. Respondent No. 1/claimant preferred claim petition with the averment that on 23.6.2003 the offending bus being rashly and negligently driven by respondent No. 2 on the wrong side dashed against him resulting in permanent disability. The vehicle was being driven by a driver having valid driving licence and the same was insured with the appellant and with these pleadings, a sum of Rs.8,91,250/- was claimed under various heads towards compensation.

8. Respondents No. 2 & 3 in their joint reply denied the allegations of rash and negligent driving as also the averment that the claimant sustained permanent disability and was entitled for the compensation as claimed in the petition. However, it was contended that the vehicle was insured by the appellant and compensation, if any, shall be payable by the appellant/insurance company.

9. The appellant in its reply denied the allegation of rash and negligent driving resulting in accident causing permanent disability to the claimant and stated that the driver did not have valid and effective driving licence at the time of accident to drive passenger bus, therefore, the police after investigation has filed charge sheet against driver Nanchu @ Nanku under Section 3/181 of the Motor Vehicles Act, 1988 (for brevity 'the Act') for driving the bus without having valid licence and in these circumstances, no liability can be fastened upon the insurance company as the bus was being driven by a person who did not possess valid and effective driving licence.

10. On the basis of pleadings of the respective parties, issues were framed and the claim petition was allowed and impugned award was passed with the finding that the accident occurred because of rash and negligent driving by respondent No.2 resulting in grievous injuries to the respondent No.1/claimant who sustained permanent disability to

the extent of 10%. However, the issue whether respondents No. 2 & 3 have committed a breach of policy condition regarding driving licence, has been answered in negative and the appellant along with respondents No. 2 & 3 has been jointly and severally held liable for satisfying the award.

11. It is not in dispute that the bus involved in the accident is a transport vehicle which was insured by the appellant for the relevant period vide insurance policy of Ex. N.A.-1. From perusal of the policy, it is evident that the insurance was done for passenger carrying commercial vehicle bearing registration No. M.H. 27/A-9167 of Tata make with the carrying capacity of exceeding 18 passengers but not exceeding 36 passengers with a sitting capacity of 25 passengers. As per the document of Ex.N.A.-2, a memo addressed by Regional Transport Office to the investigator of the appellant/insurer, driving licence N-2256/02 belongs to respondent No.2 Nanku Prasad and the same is for driving private light motor vehicle and it was valid for the relevant period. From the document of Ex.N.A.-3, a motor claim form submitted by insured M.K. Verma before the appellant which has been proved by Anil Sao, Sr. Assistant of the appellant/insurer, the vehicle was a passenger bus, the same was being driven by Nanku Prasad having driving licence No. 2256/02 who had the licence to drive H.G.V. Witness Anil Sao (N.A.-3) examined by the appellant has categorically stated that driver of the vehicle did not have valid driving licence for driving the transport vehicle as he was holding licence only to drive light motor vehicle and a charge sheet has been filed against the driver for the offence of driving the vehicle without valid driving licence. The information regarding driving licence of respondent No.2/driver is document N.A.-2 which was received by them from R.T.O. and owner of the vehicle had submitted duly filled in motor claim form vide Ex.N.A.-3 before the appellant/insurer. This witness has been cross-examined by the respondent No.1/claimant and in paragraph-10 of his statement he has categorically stated that in form of Ex. N.A.-3, the owner has given

information that driver had H.G.V. licence. The above version of this witness has not been challenged by respondents No.2 & 3 , therefore, from the statement of this witness it is established that respondent No.2 - driver Nanku Prasad had driving licence to drive private L.M.V. though the owner in the document of Ex.N.A.-3 had claimed that he had licence to drive H.G.V.

12. It is settled law that the insurance company is required to prove that there has been a breach of policy condition on the part of insured in allowing the vehicle to be driven by a person who did not have valid and effective driving licence.

13. The first question to be considered in this appeal is - whether respondent No. 2/driver was not having valid and effective driving licence at the time of accident to drive the offending passenger bus?

14. From the statement of the witness examined by the appellant and documents of Ex.N.A.-2 and N.A.-3, it is established that driver Nanku was holding licence to drive private light motor vehicle and as already stated above, at the relevant time he was driving the commercial transport bus with a carrying capacity of 25 passengers. Now coming to the submission of learned counsel for respondent No.3 that there is no evidence available on record to show that the vehicle was in fact not a light motor vehicle.

15. Sub-section 21 of Section 2 of the Act defines "light motor vehicle" as a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms.

16. The driving licence has been defined in Sub-section 10 of Section 2 of the Act, as the "driving licence" means the licence issued by a competent authority under Chapter II authorizing the person specified

therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

17. Sub-section 33 of Section 2 of the Act envisages that "private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and the ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes.

18. As per Sub-section 35 of Section 2 "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.

19. Transport vehicle has also been defined in Sub-section 47 of Section 2 of the Act, as a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

20. Section 3 of the Act provides for necessity for driving licence which is being reproduced hereinunder:

> **3. Necessity for driving licence.**-(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle [other than [1][a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.
>
> (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

21. Section 10 deals with form and contents of licences to drive, which is reproduced hereunder:

10. Form and contents of licences to drive.-(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

(a) motor cycle without gear;
(b) motor cycle with gear;
(c) invalid carriage;
(d) light motor vehicle;
[1][(e) transport vehicle;]
(i) road-roller;
(j) motor vehicle of a specified description.

22. Section 11 of the Act envisages that any person holding a driving licence to drive any class or description of motor vehicles, who is not for the time being disqualified for holing or obtaining a driving licence to drive any other class or description of motor vehicles, may apply to the licensing authority in such form with such fee as may be prescribed by the Central Government for the addition of such other class or description of motor vehicles to the licence.

23. In the instant case, it is not in dispute that the bus in question was used for carrying passengers for hire and as such public transport vehicle. As per Sub-section 2(e) of Section 10 of the Act "transport vehicle" is a separate class of vehicle and driving licence may be given entitling the holder to drive a motor vehicle which may be a light motor vehicle or transport vehicle as per Section 10(2)(d)&(e) of the Act, respectively. Thus, from the conjoint reading of Sections 10 & 11 of the Act, it is manifestly clear that the licensing authorities issue driving licences for driving light motor vehicle and transport vehicle under different forms and as such, the light motor vehicle and transport vehicle are different class for the purposes of driving licence and it is open to the holder of one class of driving licence

(L.M.V. in the present case) to apply for the addition to driving licence of another class or description of motor vehicles (transport vehicle) under Section 11 of the Act after depositing prescribed fee.

24. There is no dispute in the instant case that the vehicle in question was a public service vehicle as defined under Section 2(35) of the Act as the same was used for commercial purposes of carrying passengers whereas the endorsement in Ex.N.A.-2, the driving licence of respondent No.2, clearly mentions that he was having a licence for L.M.V. to drive private vehicle, Therefore, from the evidence available on record this Court is satisfied that respondent No.2/driver did not have valid and effective driving licence to drive commercial passenger bus at the time of accident.

25. I am fortified in my view with the principles of law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Kusum Rai and others** (supra) wherein the driver of the offending jeep was holding driving licence to drive light motor vehicle and was driving a jeep which was being plied as a commercial vehicle and in these circumstances, it has been held that there was a breach of condition of contract of insurance by the insured as the driver did not possess valid driving licence to drive commercial vehicle and the insurance company was given liberty to recover the amount paid from owner by initiating proceedings before the executing Court.

26. Hon'ble Supreme Court in the matter of **Ishwar Chandra & Ors.** (supra) has also referred the judgment rendered in the matter of Kusum Rai with approval.

27. The second question for consideration is - whether the appellant can avoid its liability of payment against the award solely on the ground that driver of the offending vehicle was possessing driving licence of one category and was driving the vehicle of another category? This question has been dealt with by the Hon'ble Supreme court in the

matter of **National Insurance Co. Ltd. Vs. Swaran Singh and others** reported in **2004(3) SCC 297.** Paragraph-89 of the above judgment specifically deals with this issue, which is reproduced as under:

> 89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer", and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle without gear", [*sic* may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on fact, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

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28. If we examine facts of the present case in the light of above law laid down by the Hon'ble Supreme Court, it is observed that there is unrebutted evidence available on record to show that the accident occurred because of rash and negligent driving of the vehicle by respondent No.2 and the accident occurred at a secluded place when the injured was going by his bicycle on correct side and stopped his cycle when the offending bus being driven rashly and negligently came from wrong side and dashed against him. No evidence has been adduced by the owner or the driver that the accident was caused because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence. On the contrary, from the evidence available on record, it is established that the accident occurred because of rash and negligent driving by respondent No. 2, who was not having valid and effective driving licence to drive the said vehicle at the time of accident.

29. In the light of aforesaid discussions and principles of law laid down by the Hon'ble Supreme Court in the matter of **Kusum Rai** (supra), the ratio of law propounded in the judgment of the division bench of M.P. High Court delivered in the matter of **United India Insurance Co. Ltd. Vs. Radheshyam and others** (supra) is of no help to the respondent No.3/owner, considering that the provisions of licensing of drivers of motor vehicles under Chapter-II and particularly Sections 3, 10 & 11 of the Act, has not been dealt with in the aforesaid judgment.

30. In the result, the appeal is allowed. Accordingly, the impugned award passed by the Tribunal is set aside so far as the appellant/insurer has been held jointly and severally liable to satisfy the award along with respondents No. 2 & 3 and the appellant/insurer is exonerated from the liability of paying compensation against the impugned award. However, in the facts and circumstances of the case, we direct that the appellant/insurer shall pay quantum of compensation

fixed by the claims Tribunal, about which there was no dispute raised, to respondent No.1/claimant within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the concerned Regional Transport Authority. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of vehicle, the insured. No order as to coasts.

Sd/-
Dhirendra Mishra
Judge